

## Executive Summary

This is a document showing how BCS Strata Management (Raine & Horne Strata Sydney prior to 2010) bypasses Strata Schemes Management Act (SSMA) 1996 Section 80A.

This Section is removed in other complexes as well - effectively by-passing requirements for prudent financial decisions at general meetings.

Within this document, it is shown how three strata complexes in different parts of NSW suffer from the same issue: lack of SSMA 1996 S80A and financial scrutiny:

### *80A Limit on spending by executive committees of large strata schemes*

*(1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent.*

The minutes of the AGM for two of them (one in North NSW and one in Sydney CBD) show identical language in the motions!

There is no business justification for allowing expenditures without proper consultation with the owners corporation. Due to lack of SSMA 1996 S80A, the Executive Committee at Macquarie Gardens ran number of projects without any review by the owners, spent excessive amount of money (sometimes secretly and without disclosure), and even failed to obtain additional quotations for works on number of occasions (contracts management is one example of very serious financial mismanagement and lack of planning).

For three years, a concerned owner was trying to rescind the decision made in 2005 so that strata complex enforced compliance with the Strata Management Acts 1996, Division 3, Section 80A (1), which most other complexes use successfully for many years. The Explanatory Notes for owner's motions were deliberately excluded from the agenda at three AGMs by BCS Strata Management.

Owners corporation of a large strata scheme must include in the estimates at an annual general meeting specific amounts in relation to each item or matter on which the owners corporation intends to expend money, or on which the owners corporation is aware money will be likely to be expended, in the period until the next annual general meeting. It is done by taking into account a statement of the existing financial situation of the strata scheme and an estimate of receipts and payments. If the error margin is not more than 10%, the NSW Management Act includes provisions to cover this case without any special actions by the owners corporation. That has never happened for 16 years at Macquarie Gardens. Strata Management Act 1996, Part 3, Division 2, covers the recurrent expenses through the administrative fund.

### *Division 2 - Levy of contributions*

#### *75 Estimates to be prepared of contributions to administrative and sinking funds*

*(1) An owners corporation must, not later than 14 days after the constitution of the owners corporation and at each annual general meeting after that, estimate how much money it will need to credit to its administrative fund for actual and expected expenditure:*

- (a) to maintain in good condition on a day-to-day basis the common property and any personal property vested in the owners corporation, and*
- (b) to provide for insurance premiums, and*
- (c) to meet other recurrent expenses.*

*Recurrent expenses would include such regular expenses as insurance, water charges, electricity charges, carpet cleaning, lawnmowing services and the like and minor expenses relating to maintenance of the common property.*

## Large Strata Complex SP52948 at Macquarie Park

- AGM held on 6<sup>th</sup> of October 2004, it prepared grounds for running rigged building painting project in FY 2005/2006, which, eventually, increased the cost by more than \$110,000.00, of which \$43,000.00 are still unaccounted for (as of February 2016):

### MOTION 9:

That upon the Strata Schemes Management Amendment Bill 2003 being gazetted, under Division 3 (Restrictions on Spending), Section 80A (1) shall have no effect for the period until the next Annual General Meeting in 2005 at which time this matter will be reconsidered.

#### **Division 3      Restrictions on Spending**

#### **80A      Limit on Spending by Executive Committees of large strata schemes**

(1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent – Carried.

(2) The owners corporation of a large strata scheme may by resolution at a general meeting remove the limitation imposed by subsection (1) generally or in relation to any particular item or matter – Carried.

- At the AGM held on 19<sup>th</sup> of October 2005, the following Motion was approved: to delete NSW Strata Management Acts 1996, Division 3, Section 80A (1):

### MOTION B:

That under Division 3 (Restrictions on Spending), Section 80A (1) shall be deleted.

#### **Division 3      Restrictions on Spending**

#### **80A      Limit on Spending by Executive Committees of large strata schemes**

(1) If a specific amount has been determined as referred to in section 75 (5) for expenditure on any item or matter, the executive committee of the owners corporation concerned must not, in the period until the annual general meeting next occurring after the determination was made, spend on the item or matter an amount greater than that determined amount for expenditure on the item or matter plus 10 per cent.

(2) The owner's corporation of a large strata scheme may by resolution at a general meeting remove the limitation imposed by subsection (1) generally or in relation to any particular item or matter.

Carried.

- AGM held on 17<sup>th</sup> of October 2007:

### MOTION 8

That the following additional By Law be approved

#### **Special By Law 8 – Acquisition of Additional Common Property**

The Executive Committee of the Owners Corporation are hereby granted the power and authority to approve the acquisition of additional Common Property and the appropriate expenditure from the Sinking Fund providing that the amount of such expenditure shall not exceed 10% of the Sinking Fund balance at that time.

Special Resolution.

- Carried.

- AGM held on 26<sup>th</sup> of November 2014

**MOTION 14:** That the removal of the restriction in respect of any Administration Fund expenditure, imposed on large strata schemes under Section 80A of the Act (the restriction prohibits expenditure in excess of ten percent of the budget for that item without holding a General Meeting) be confirmed. – **Carried.**

Second quote for this project was never provided to any owner, in spite of SSMA 1996 S108 document search:

**MOTION 15:** That the Owners Corporation accept the quotation (copy attached) for a torch-on membrane from Kintyre Roofing in the amount of \$53,960 plus GST and ratify the EC decision recorded in the EC minutes of 11 Sept 2014 to apply this approach to other tower roofs as required. – **Carried.**

**MOTION 16:** That the Executive Committee, in addition to its existing authority, be authorised to proceed with expenditure from the Sinking Fund in excess of \$30,000 per contract in any one year without reference to a General Meeting where that expenditure is on building or roof repairs, external or internal painting and any services or plant and equipment replacements provided that, at least two quotes have been obtained and the lower quote accepted and that the expenditure will not give rise to the need for an increase in the sinking fund levy in excess of a 5% increase on the prior year or give rise to a special levy in the current or following year.

An amendment to the motion was received from the floor regarding accepting quotes other than the lowest other factors considered. The motion was amended to read:

That the Executive Committee, in addition to its existing authority, be authorised to proceed with expenditure from the Sinking Fund in excess of \$30,000 per contract in any one year without reference to a General Meeting where that expenditure is on building or roof repairs, external or internal painting and any services or plant and equipment replacements provided that, at least two quotes have been obtained and the quote, which in the opinion of the Executive Committee offers the best result considering all relevant factors is accepted, and that the expenditure will not give rise to the need for an increase in the sinking fund levy in excess of a 5% increase on the prior year or give rise to a special levy in the current or following year. – **Carried.**

- AGM held on 4<sup>th</sup> of November 2015 “approved” the following Motion

#### **4. EXPENDITURE LIMITS AND OTHER RESTRICTED MATTERS:**

##### Motions

- 4.1 That the restriction in Section 80A of the Act that the Executive Committee be limited from spending more than 10% over any single budget item be removed.
- 4.2 That pursuant to Section 80A of the Act, the Executive Committee be restricted to spending not greater than 10% above the amount determined for the total of budget expenditure.
- 4.3 That there be no additional restrictions placed on the Executive Committee other than those currently imposed by Section 21 (2) of the Act.

##### Explanatory Note

*Section 21 (2) of the Act requires that the Owners Corporation decide if any matter or class of matter is to be determined in a general meeting rather than at an Executive meeting.*

*BCS suggests that at the AGM no changes be made to the prescribed powers of the Executive except that the Executive Committee not be limited from spending more than 10% over any single budget item, but rather provide some flexibility and make the restriction apply to the whole of the budget. Not to provide this flexibility may require significantly more general meetings and may lead to less timely decision making.*

- Thanks to single owner's tireless work, at AGM 2016 held on 19<sup>th</sup> of October 2016, these restrictions were imposed again:

<b>6. EXPENDITURE LIMITS AND OTHER RESTRICTED MATTERS:</b>	
6.1	That the restriction in Section 80A of the Act that the Executive Committee be limited from spending more than 10% over any single budget item be removed. <b>DEFEATED</b>
6.2	That pursuant to Section 80A of the Act, the Executive Committee be restricted to spending not greater than 10% above the amount determined for the total of budget expenditure. <b>APPROVED</b>
6.3	That there be no additional restrictions placed on the Executive Committee other than those currently imposed by Section 21 (2) of the Act. <b>APPROVED</b> <b>57 voted Yes, 3 voted No</b>

It is also worth noting that after 16 years of "winning" contract renewals without tender, BCS Strata Management was finally removed from SP52948:

<b>27. REAPPOINTMENT OF MANAGING AGENT:</b>	
27.1	That in accordance with section 27(1) of the Strata Schemes Management Act 1996 (Act) that: <ul style="list-style-type: none"> <li>(a) BCS Strata Management Pty Ltd trading as Body Corporate Services be appointed as strata managing agent of Strata Scheme No. 52948, total cost being \$29,000.00 plus \$6,996.00 (disbursements) Total = \$35,996.00 INCL. GST ;</li> <li>(b) the Owners Corporation delegate to the Agent all of the functions of:               <ul style="list-style-type: none"> <li>(i) the Owners Corporation (other than those listed in section 28(3) of the Act); and</li> <li>(ii) its chairperson, treasurer, secretary and Executive Committee, necessary to enable the Agent to carry out the 'agreed services' and the 'additional services' as defined in the written agreement, a copy of which was attached to the notice of the meeting at which this resolution was passed (Agreement);</li> </ul> </li> <li>(c) the delegation to the Agent is to be subject to the conditions and limitations in the Agreement; and</li> <li>(d) the Owners Corporation execute the Agreement to give effect to this appointment and delegation; and</li> <li>(e) authority be given for the common seal of the Owners Corporation to be affixed to the Agreement in accordance with Section 238 of the Act.</li> </ul> <p>Explanatory Note The motion above is the standard motion for the Owners Corporation to appoint BCS as the managing agent for the strata scheme. The motion includes those functions that are to be delegated to the managing agent. A copy of the proposed Management Agreement is attached.</p> <p><b>DEFEATED</b> <b>10 voted Yes, 50 voted No</b></p>

**Strata Complex SP56433 in Pitt Street Sydney CBD (they terminated the contract with BCS Strata Management on 26<sup>th</sup> of September 2012)**

- AGM held on 26<sup>th</sup> of September 2012:

**7. EXPENDITURE LIMITS AND OTHER RESTRICTED MATTERS:**

Motions

7.1 That the restriction in Section 80A of the Act that the Executive Committee be limited from spending more than 10% over any single budget item be removed.

**CARRIED**

7.2 That pursuant to Section 80A of the Act, the Executive Committee be restricted to spending not greater than 10% above the amount determined for the total of budget expenditure.

**CARRIED**

7.3 That there be no additional restrictions placed on the Executive Committee other than those currently imposed by Section 21 (2) of the Act.

**CARRIED**

**Strata Complex SP81047 at Casuarina**

- AGM held on 3<sup>rd</sup> of November 2013. **Note identical wording and language used one year earlier in strata complex in Pitt Street Sydney CBD. These two complexes are around 800 kilometres apart!**

**7. EXPENDITURE LIMITS AND OTHER RESTRICTED MATTERS:**

7.1 That the restriction in Section 80A of the Act that the Executive Committee be limited from spending more than 10% over any single budget item be removed.

**CARRIED**

7.2 That pursuant to Section 80A of the Act, the Executive Committee be restricted to spending not greater than 10% above the amount determined for the total of budget expenditure.

**CARRIED**

7.3 That there be no additional restrictions placed on the Executive Committee other than those currently imposed by Section 21 (2) of the Act.

**CARRIED**